

NO. 2058

**United States Circuit
Court of Appeals
For the Ninth Circuit**

STEAMSHIP "COLUMBIA," Etc., and JAMES
BARRON, Owner,
Appellants,

vs.

ALEX ZUEGHOER, K. J. JOHANNSON and JULIUS
JOHANNSON,
Appellees.

Brief on Behalf of Appellants

UPON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE WESTERN
DISTRICT OF WASHINGTON,
NORTHERN DIVISION

ROBERT McMURCHIE,
Proctor for Appellant.
Everett, Washington.



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STATEMENT

This matter comes before this Court on the appeal of James Barron from the judgment of the District Judge herein. The trial was had before the referee, the evi-

VIII.

“That said libellant K. J. Johannson stated to the
“said claimant, James Barron, that if he, the said James
“Barron, would continue the said ‘Columbia’ on her then
“run after the said ‘Columbia’ has been taken over from
“the said Sound Motor Company, that said libellant
“would contribute wages due to him for the repairing of
“said vessel in the sum of One Hundred (\$100.00) Dol-
“lars, and that at the time of entering into said agree-
“ment, said libellant was captain of said vessel and had
“succeeded as president of said corporation and desired
“to keep said boat on said run.

IX.

“That during the time aforesaid, the libellant Julius
“Johannson was employed thereon by the said Sound
“Motor Company at the agreed rate of wages of Sixty-five
“(\$65.00) Dollars per month, and that by reason of such
“services, there is now due and owing to him by the said
“Sound Motor Company the sum of Sixty-five (\$65.00)
“Dollars.

X.

“That during all of the times mentioned all the libel-
“lants herein were stockholders and K. J. Johannson was
“one of the officers of the Sound Motor Company, a cor-
“poration, and the said libellant, Alex Zueghoer, as an
“officer of the said Sound Motor Company, after July
“1st, 1910, and while acting as purser on the said vessel,
“did collect moneys for the services rendered by the
“said vessel from passengers and for the carrying of
“freight, and did pay same over to the president of the
“Sound Motor Company, a corporation, and at the time
“of making said payments, the said Alex Zueghoer was the
“treasurer after July 1st, but purser at all times of the

“said Sound Motor Company and had charge of the receipts and disbursements of said corporation.

XI.

“That the said Sound Motor Company did incur liabilities which were a charge upon the said steamer ‘Columbia’ and which the claimant herein was forced to pay in a sum in excess of Fifteen Hundred (\$1,500.00) Dollars, which sum the claimant was forced to pay in order to protect his mortgage security.

CONCLUSIONS OF LAW

“From the Findings of Fact and from the records and evidence in this action, the Court concludes as follows:

I.

“That the libellant Alex Zueghoer is entitled to recover from the claimant and his bondsmen the sum of Two Hundred and Twenty-nine (\$229.00) Dollars, without interest, to which conclusion of law the claimant excepted, which exception is allowed.

II.

“That the libellant K. J. Johannson is entitled to recover the sum of Fifty-five (\$55.00) Dollars only, without interest for the reason that there is a valid consideration for his agreement with the claimant to contribute One Hundred (\$100.00) Dollars towards the repairs of the steamship ‘Columbia,’ by reason of which said claimant is entitled to an offset of One Hundred (\$100.00) Dollars, to which conclusion of law the libellant excepted to the allowance of said One Hundred (\$100.00) Dollars, which exception is allowed.

III.

“That the libellant, Julius Johannson, is entitled to judgment against the claimant and his bondsmen for the sum of Sixty-five (\$65.00) Dollars, without interest, to which conclusion of law the claimant excepted, which exception is allowed.

IV.

“That libellants have and recover herein their costs and disbursements to be taxed by the Clerk of this Court, to which conclusion of law the claimant excepted, which exception is allowed.

V.

“That said libellants have a valid and subsisting lien upon said steamship ‘Columbia,’ which lien is in full force and effect, and the said claimant having filed his bond herein, libellants are entitled to judgment and execution against the said claimant and his bondsmen for said amount, for all of which let the decree be entered, to which conclusion of law the claimant excepted, which exception was allowed.

DECREE

“By virtue of the law and by reason of the premises aforesaid, it is hereby ordered, adjudged and decreed:

“That the libellants do have and recover of and from the claimant James Barron and D. Neeson, his bondsman herein, the following sums, to-wit:

I.

“Libellant Alex Zueghoer the sum of Two Hundred and Twenty-nine (\$229.00) Dollars.

II.

—Libellant K. J. Johansson the sum of Fifty-five
(\$55,000) Dollars.

III.

—Libellant Julius Johansson the sum of Sixty-five
(\$65,000) Dollars.

IV.

—Libellants recover their costs and disbursements
therein to be taxed by the Clerk of this Court.

V.

—For all of which let execution issue against the goods
and chattels of said claimant James Barron and said D.
Newson, his bondsmen herein.

—To all the foregoing the claimant James Barron
excepts, which exception is hereby allowed.

—Dated this 2nd day of October, 1911.

—C. H. HANFORD, Judge.

The facts respecting the controversy as they appear
from the evidence taken before the referee and returned
by him to the District Judge, and as set forth in the
opinions on appeal and the Findings of Fact of the trial
Judge are briefly as follows:

That the steamer "Columbia," a boat duly registered
under the laws of the United States, plying the waters of
Puget Sound, was within the jurisdiction of this Court,
and after the action started with James Barron as claim-
ant, made claim to the boat and furnished a bond as

required by law; that in the month of March, 1910, one James Good, then the owner of the said boat sold same to the Sound Motor Company, a corporation, and at that time the said steamer "Columbia" was covered by a mortgage held by the appellant James Barron, on which there was unpaid the sum of Ten Thousand Five Hundred (\$10,500) Dollars, and this sum the Sound Motor Company agreed to pay as part of the consideration for the purchase of the boat; that the appellee Alex Zueghoer was a stockholder in the Sound Motor Company at the time of the purchase of the said boat, and that after the 1st of July, 1910, he became a trustee and treasurer in the said Sound Motor Company, and that the Sound Motor Company employed him as purser on the said vessel; that the appellee K. J. Johannson was a stockholder in the said Sound Motor Company at the time of the purchase of the said steamer "Columbia" and became a trustee and officer in the said corporation after the 1st day of July, 1910; that the appellee Julius Johannson was a stockholder of said Sound Motor Company at the time of the purchase of the said vessel and was employed by the said Sound Motor Company to work on said vessel.

The Findings of Fact also show, that during the time that the boat was run by the Sound Motor Company and prior to the foreclosure of his mortgage by the said appellant, the appellee Alex Zueghoer was the purser on the said boat and as such, collected the moneys for the ser-

vices rendered by the boat for carrying passengers and freight, and paid the moneys received by him to the president of the Sound Motor Company, although at the time of making the payments to the president of the Sound Motor Company, he was the treasurer of the said corporation. The Findings of Fact also show, that the Sound Motor Company by running the said boat incurred large liabilities amounting to the sum of Fifteen Hundred (\$1500.00) Dollars, which sum the appellant was obliged to pay, and did pay, in order to protect his mortgage on the said vessel. In July, 1910, the mortgage being in default, the appellant took possession of the boat and the evidence shows that the appellees in this case induced the appellant to allow them to run the boat, hoping to secure a purchaser for same. During the time that they ran the boat, they incurred liabilities which the appellant was obliged to pay, amounting to the sum of about Five Hundred (\$500.00) Dollars, and during all the times their wages for running the boat were paid by the appellant.

The question involved in this appeal is, whether under the facts as so disclosed, the appellees are entitled to a lien on the steamer "Columbia" for the wages which were due to them for working for the Sound Motor Company, while the Sound Motor Company was the owner of the vessel.

ASSIGNMENTS OF ERROR

I.

The Court erred in finding as a Conclusion of Law from

the Findings of Fact entered, that the libellant Alex Zueghoer was entitled to recover from the claimant and his bondsman the sum of Two Hundred and Twenty-nine (\$229.00) Dollars without interest.

II.

The Court erred in finding that the libellant K. J. Johansson was entitled to recover the sum of Fifty-five (\$55.00) Dollars, without interest, against claimant and his bondsman.

III.

The Court erred in finding that the libellant Julius Johansson was entitled to a judgment against the claimant and his bondsman for the sum of Sixty-five (\$65.00) Dollars, without interest.

IV.

The Court erred in entering a decree that the libellants should have and recover their costs and disbursements herein.

V.

The Court erred in finding that the libellants have a valid and subsisting lien upon the steamer "Columbia."

VI.

The Court erred in finding that the libellants were entitled to judgment and execution against the claimant and his bondsman for the amounts of the liens.

VII.

The Court erred in entering a decree in favor of the libellant Alex Zueghoer for the sum of Two Hundred and Twenty-nine (\$229.00) Dollars.

VIII.

The Court erred in entering a decree in favor of libellant K. J. Johannson for the sum of Fifty-five (\$55.00) Dollars.

IX.

The Court erred in entering a decree in favor of the libellant Julius Johannson in the sum of Sixty-five (\$65.00) Dollars.

X.

The Court erred in entering a decree that the libellants recover their costs and disbursements.

XI.

The Court erred in directing that execution might issue against the goods of the claimant James Barron and D. Neeson, his bondsman.

XII.

The Court erred in not entering a decree dismissing the libel of the libellant Alex Zueghoer as to the said steamer "Columbia" and as to James Barron, the owner and claimant.

XIII.

The Court erred in not entering a decree dismissing the libel of the libellant K. J. Johannson as to the said

steamer "Columbia" and as to James Barron, the owner and claimant.

XIV.

The Court erred in not entering a decree dismissing the libel of the libellant Julius Johansson as to the said steamer "Columbia" and as to James Barron, its owner and claimant.

ARGUMENT

These assignments of error present to this Court the question whether the appellees are entitled to a lien upon the steamer "Columbia."

Remington & Ballinger's Codes and Statutes of the State of Washington, Section 1182, provides that all vessels, steamers, etc., are liable:

"1. For services rendered on board at the request of, or under contract with their respective owners, charterers, masters, agents or consignees."

The record in this case shows clearly, that the appellees herein were all employed by the Sound Motor Company; were all stockholders in the Sound Motor Company at the time of the purchase by the Sound Motor Company of the vessel in question; that as such, they were aware of the fact that the Sound Motor Company did not pay for the vessel entirely; that at the time of the purchase by the said Company, a mortgage existed on the boat in favor of the appellant herein, and the Sound Motor Com-

pany having made default in the payment of the wages which it agreed to pay to its stockholders, and one of the appellees being a trustee in the Sound Motor Company at all the times, and the other trustee after the 1st day of July, 1910.

It is contended on behalf of the appellant in this case, that it would be a gross fraud on the appellant to allow the appellees, when the corporation in which they were stockholders having assumed and agreed to pay for the mortgage of the appellant, should be permitted, not only to incur large liabilities which were a claim against the boat, and which the appellant had to pay, but that in addition to the officers so running the vessel, incurring these liabilities, that they should be permitted now to claim a lien upon the vessel, which is the only security which the appellant has for his mortgage.

It is submitted that at the time the appellees started to work on the steamer "Columbia," they did not start to work on the faith and credit of the vessel, but on the faith and credit of the corporation in which they were stockholders, and it would not be equitable to allow them to claim a lien upon the vessel while they were stockholders in the corporation which incurred the liability in question, any more than it would be to allow an owner of a vessel to mortgage same and to thereafter claim wages on the vessel for the work rendered by him on the

vessel, and claim that in priority to the mortgage which he had given.

The case of *Scott vs. Failes*, 5 Ben. 82, holds, that a cook hired on the exclusive credit of the master, has no lien on the vessel for his wages.

The case of *Crusador*, 1 Ware 437, and *Packard vs. The Louisa*, 2 Wood. & M. 54, show that seamen hired by the master who look to him for remuneration, have no lien on the vessel for their wages.

The same section of the law under which the appellees claim a lien upon the vessel, gives a material man a lien for supplies furnished; and this Court in the case of *Alaska & P. S. Steamship Co. vs. Chamberlain*, 116 Fed., p. 600, following cases cited therein, holds that there can be no lien unless it is contemplated by both parties at the time of the transaction, evidenced either by express words to that effect, or by circumstances of such a nature as to justify the inference, that the goods were sold upon the credit of the vessel, and upon the part of the purchaser to pledge the vessel, and unless this was so, then the seller of the goods had no lien upon the vessel.

We submit that in this case the same rule of law applies and there certainly can be no understanding upon the part of the trustees or stockholders of a corporation that they should have a lien upon the vessel for their wages, taking priority over a mortgage over the vessel

placed there with their knowledge at the time that they started to work on the vessel.

It is respectfully submitted that the order of the District Court should be reversed, that it should be decreed that the appellees have no lien whatever upon the steamer "Columbia" for any wages for work rendered by them on the vessel while same belonged to the Sound Motor Company.

Respectfully submitted,

ROBERT McMURCHIE,

Proctor for Appellant.

407 American National Bank Bldg.,
Everett, Washington.

